

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

RONALD THOMAS DRACOS
HARRIS COUNTY SHERIFF ED GONZALEZ,
STATE OF TEXAS BOARD
OF PAROLES AND PAROLES

CAUSE NO.

APR 20 2020

David J. Bradley, Clerk of Court

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION

FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION

STATEMENT OF THE CASE:

THIS IS AN EMERGENCY PETITION CHALLENGING HIS DETENTION

DUE TO THE DANGER POSE TO, RONALD THOMAS DRACOS, FROM

THE COVID-19 PANDEMIC. THE PETITIONER PLEADS THAT THE

COURT HAS JURISDICTION OVER THE ISSUES RAISED IN THE PETITION

OF THE ABOVE STYLED CASE, PURSUANT TO 28 USC § 1291, 1292 of the

UNITED STATES CONSTITUTION SUSPENSION CLAUSE; THE DUE PROCESS

CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS AND THE

PROTECTION OF RIGHTS CLAUSE OF THE EIGHTH AMENDMENT.

28 USC § 1331 (FEDERAL QUESTION); 28 USC § 1651 (ALL WRITS ACT)

AND 28 USC § 2241 (HABEAS CORPUS) PETITIONER REQUESTS A

TEMPORARY RESTRAINING ORDER REQUIRING THAT RESPONDENTS

RELEASE HIM ON HIS OWN RECOGNIZANCE FOR HIS PROCEEDINGS

HARRIS COUNTY DISTRICT COURT 262 CAUSE NO. 1650428 AND

ALSO HIS PAROLE VIOLATION WARRANT # 09142019-056999041

PENDING THAT HEARING WHICH HAS NOT BEEN SCHEDULED.

THE PETITIONER SEEK EMERGENCY RELIEF HEREIN

ONE OF TWO FORMS: A WRIT OF HABEAS CORPUS OR

AN INJUNCTION. THE ORDERS TO THE RESPONDENT TO

RELEASE PETITIONER WITH APPROPRIATE PRECAUTIONARY

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PUBLIC HEALTH MEASURES ON THE GROUNDS THAT THE CONTINUATION OF HIS DETENTION VIOLATES HIS RIGHTS TO DUE PROCESS, FREE OF CRUEL OR UNUSUAL PUNISHMENT AND PROTECTION OF EQUAL RIGHTS, AND EQUAL PROTECTION OF RIGHTS. THESE ARE SUPPORTED WITH THE FIFTH EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

STATEMENT OF FACTS

AS STATED IN THE DECLARATIONS SUBMITTED WITH THIS MOTION THE PETITIONER IS CONFINED AT THE HARRIS COUNTY SHERIFFS DEPARTMENT JAIL AND HE IS BEING HELD PRETRIAL AWAITING FURTHER PRELIMINARY HEARINGS AS SINCE HIS ARREST ON 10/18/2019 NO TRIAL DATE HAS BEEN SET NOR HAS HIS SPEEDY TRIAL MOTION BEEN RULED ON WHICH WAS MAILED 03/03/2020. THIS CASE NUMBER FOR PCS LESS THAN ONE GRAM IS #1650428 IN COURT 262. HE ALSO AWAITS A REVOCATION HEARING FOR PAROLE WHICH EXPIRES 04/13/2020 THIS WARRANT #081412019-056999041 VIOLATION #12603911. HIS PAROLE OFFICER MRS. BIVENEMY HAS STATED SHE HAS NO INTENT TO REVOKE HIM SINCE HE MADE PAROLE AFTER HIS MANDATORY SUPERVISION DATE AND ASIDE FROM THE PENDING CRIMINAL CHARGE PETITIONER IS ONLY ACCUSED OF TECHNICAL VIOLATIONS DUE TO ADDRESS CHANGE.

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LIFTING THE PAROLE WARRANT AND SCHEDULING OF THE MRP HEARING AFTER THE DISPOSAL OF PENDING CHARGES & PROCEEDURE. IF THE PETITIONER HAD MONEY HE COULD THEN POST BOND ON THE \$15,000.00 BOND SET BY HARRIS COUNTY AND THEN REQUEST T.D.C BOARD OF PARDONS AND PAROLE TO LIFT THEIR HOLD/WARRANT. THE PETITIONER COMPLETES HIS SENTANCE REACHING THE MAXIMUM EXPIRATION DATE AT MID-NIGHT 04-13-2020. THE CONTINUATION OF CONFINEMENT PUTS THE PETITIONER AT INHERANT RISK OF SEVERE HEALTH COMPLICATIONS, EXTENDED INTENSIVE HOSPITALIZATION AND IMMINENT DANGER POSSIBLY DEATH. PETITIONER HAS CHRONIC HEALTH ISSUES AND BREATHING PROBLEMS DUE TO ASTHMA AND ALLERGIES. HE ALSO HAS COMPLICATIONS WITH HIS IMMUNE SYSTEM AND RESPONSIVENESS TO ANTIBIOTICS PUTTING HIM AT ADVANCED RISK OF SEVERE SICKNESS AND DEATH. THE PETITIONERS ONLY DEFENSE TO COVID-19 IS SOCIAL DISTANCING AND SUFFICIENT CLEANLINESS AND GOOD HYGIENE HOWEVER SHARING SINKS, TOILETS, SHOWERS, EATING SURFACES AND SLEEPING LESS THAN SIX FEET APART MAKE IT IMPOSSIBLE TO PRACTICE MEASURES RECOMMENDED BY THE WORLD HEALTH ORGANIZATION, THE CENTER FOR DISEASE CONTROLL AS WELL AS OTHER

APRIL 1, 2020 RIKERS ISLAND, CHIEF PHYSICIAN STATES INFECTION RATES ARE SOARING DESPITE FOLLOWING CDC GUIDELINES CALLING IT AT PUBLIC HEALTH DISASTER, APRIL 1 2020, [the guardian.com/usnews/2020/APR/01/RIKERS-ISLAND-SAIL CORONAVIRUS-PUBLICHEALTHDISASTER](https://www.theguardian.com/usnews/2020/apr/01/rikers-island-sail-coronavirus-public-health-disaster).

B. THE BALANCE OF HARSHIPS FAVORS THE PETITIONER SINCE SHERIFF ED GONZALEZ HAS MADE IT PUBLICLY KNOWN HIS DESIRES TO LESSEN THE JAIL POPULATION SINCE THE INEVITABLE SPREAD WITHIN THE JAIL WILL NEGATIVELY IMPACT THE JAIL STAFF AS WELL AS THE PUBLIC DUE TO THE CLOSED QUARTERS IN THE JAIL. THIS SPREAD WILL ALSO OVERWHELM THE PUBLIC HEALTH SYSTEM AND HOSPITALS WHICH WILL RESULT IN THE EXCESSIVE LOSS OF HOSPITAL STAFF, SUPPLIES AND RESOURCES. THIS WILL CAUSE FURTHER IMMINENT DANGER TO THE PERSONNEL IN THE JAIL, THEIR FAMILIES AND ALSO CITIZENS WHOM COME IN CONTACT WITH THESE PEOPLE.

C. THE LIKELIHOOD OF SUCCESS IS UNQUESTIONABLY HIGH IN THIS CASE DUE TO THE SUCCESS OF MALAM V. ADDUCI, NOT TO MENTION THE FLAGRANT VIOLATIONS TO THE PETITIONERS RIGHTS AS WELL AS THE CONCERNS PREVIOUSLY RAISED BY THE SHERIFF ED GONZALEZ HIMSELF,

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PUBLIC OFFICIALS. THIS CONCESSION SUPPORTS THE CONCLUSION OF MULTIPLE DOCTORS AND PUBLIC HEALTH EXPERTS THAT 'THE ONLY VIABLE PUBLIC HEALTH STRATEGY AVAILABLE IS RISK MITIGATION. THE PUBLIC HEALTH RECOMMENDATION IS TO RELEASE ALL PEOPLE WITH RISK FACTORS FROM CUSTODY GIVEN THE HEIGHTENED RISK TO THEIR HEALTH AND SAFETY.

ARGUMENT

POINT #1

THE PETITIONER IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.

A.

IN DETERMINING WHETHER A PARTY IS ENTITLED TO A TRO OR A PRELIMINARY INJUNCTION COURTS GENERALLY CONSIDER SEVERAL FACTORS: WHETHER THE PARTY WILL SUFFER IRREPARABLE HARM, THE BALANCE OF HARSHIPS AND THE LIKELIHOOD OF SUCCESS, AS WELL AS PUBLIC INTERESTS.

THE PETITIONER SHOWS THAT BECAUSE OF HIS CHRONIC HEALTH ISSUES HE IS MORE LIKELY TO CONTRACT COVID 19 DUE TO HIS PRESENT CONDITIONS AND BASED ON HIS HEALTH NOW AND PREVIOUS COMPLICATIONS WITH HIS HEALTH.

ALSO ACCORDING TO THE CENTER FOR DISEASE CONTROL

DETENTION FACILITIES (LOCK UPS) PRESENT UNIQUE

CHALLENGES TO PUBLIC HEALTH CONDITIONS AS WELL AS MEDICAL TREATMENT FOR OCCUPANTS IN THE INSTITUTIONS,

03/23/2020 <https://www.cdc.gov/coronavirus/2019-nCoV/>

[community-correctional-detention/guidance-correctional-detention.html](https://www.cdc.gov/coronavirus/2019-nCoV/community-correctional-detention/guidance-correctional-detention.html)

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HARRIS COUNTY JUDGE LINA HIDALGO AS
WELL AS COMMISSIONER RODNEY ELLIS.
THE PETITIONER POSES GREAT LIABILITY
WITH HIS HEALTH CONDITIONS AND BREATHING
PROBLEMS IF HE WERE NOT SUCCESSFUL
IN THESE EFFORTS AND HE TO REMAIN
DETAINED AND FORCED TO HIGH PROBABILITY
OF EXPOSURE TO COVID 19.

POINT II

THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST
SECURITY SINCE THE COSTS OF HIS CONFINEMENT
MONTHLY MEDICAL TREATMENTS FOR PHYSICAL HEALTH,
PSYCHIATRIC TREATMENT, DIETARY SUSTAINANCE
AND OVERALL GENERAL CONDITIONS SURPASS WHAT
ITS GOING TO COST TO TREAT HIM AND DEAL
WITH HIS REMAINS IF HE WERE TO CONTRACT
COVID 19 IN THE JAIL.

FOR THE FOREGOING REASONS THE COURT SHOULD
MOVE IN FAVOR OF THE PETITIONER GRANTING
HIM THE RELIEF HE DESIRES IN ITS ENTIRETY.

04/12/2020 RONALD THOMAS DRACOS

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